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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of the Amateur Service)
Rules to Extend Temporary)
Operating Authority to New Amateur)
Operators)

PR Docket No. 93-267

To: The Commission

REPLY COMMENTS OF
THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

THE AMERICAN RADIO RELAY
LEAGUE, INCORPORATED

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February 10, 1994

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SUMMARY

The American Radio Relay League, Incorporated (the League), submits its reply comments in the instant rule making proceeding, pursuant to the Notice of Proposed Rule Making, FCC 93-480, 8 FCC Rcd. 7916 (1993) (the Notice). The Notice proposes amendments of the Amateur Service rules to permit unlicensed persons, who have successfully completed the requisite elements of an amateur radio examination administered by a volunteer examiner, to operate an amateur radio station while awaiting Commission action on an application for an amateur radio station/operator license.

The comments in this proceeding are, almost without exception, in agreement with those of the League. The Commission is to be commended for attempting to accommodate the Amateur Service by reduction of the presently overly long waiting period between the time a newcomer to the Service passes an examination and the time he or she is able to get on the air with a Commission-issued license. The amateur community is not unsympathetic to the problem of calls to the Commission's Gettysburg office concerning status of applications as a source of further delay in their issuance. However, with an entirely satisfactory solution to the problem at hand in electronic filing of applications, and one which suffers none of the enforcement difficulties of the temporary licensing plan proposed in the Notice, the amateur community has overwhelmingly rejected the latter.

The comments reflect a desire to "get on with it" with respect to electronic application filing, to the extent that the VECs are willing to assume the data processing burden in submitting forms 610 electronically. This cannot be more than a few months away at worst, given the Commission's new computer system and the elimination of the signature requirement for private radio applications. It would be more expeditious to terminate this proceeding and proceed with implementation of electronic filing arrangements than to attempt to address the myriad of problems in this proceeding.

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THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

The American Radio Relay League, Incorporated (the League), the national association of amateur radio operators in the United States, by counsel and pursuant to Section 1.415(c) of the Commission's Rules [47 C.F.R. §1.415(c)], hereby respectfully submits its reply comments in the instant rule making proceeding, pursuant to the Notice of Proposed Rule Making, FCC 93-480, 8 FCC Rcd. 7916 (1993) (the Notice). The Notice proposes amendments of the Amateur Service rules to permit unlicensed persons, who have successfully completed the requisite elements of an amateur radio examination administered by a volunteer examiner, to operate an amateur radio station while awaiting Commission action on an application for an amateur radio station/operator license. In response to certain of the comments submitted in response the Notice proposal, and in continued opposition to the grant of temporary operating authority for unlicensed persons as proposed in the Notice, the League states as follows:

I. Introduction

1. The League's comments in this proceeding raised legal and practical issues which draw into serious question the ability of the Commission to implement the rules now proposed in the Notice, and the utility of so doing. The most obvious problem with the Notice proposal is that by permitting unlicensed persons to choose a call sign and go on the air without a Commission-issued license, the Commission is inviting abuse. A person who wishes to use amateur frequencies can do so, inventing his or her call sign, without ever taking an examination or submitting a Form 610 to the Commission, without fear of detection. Under the plan proposed in the Notice, there would be absolutely no way for licensed radio amateurs to determine the bona fides of any operator using a self-assigned call sign. The plan, though well-intentioned, is flawed in its premises, and should not be adopted, since electronic filing of applications is immediately available as an alternative.

II. The Comments Uniformly Oppose the Notice Proposal

2. This point was noted by virtually all of the 77 commenters in this docket proceeding¹, most of whom opposed the plan for temporary operating authority as proposed in the Notice.² Only a

¹ Some of those comments were filed in response to the Petition for Rule Making, RM-8288, rather than to the Notice proposal, but were consolidated in the docket file.

² The League's continuing review of each of the comments in the Commission's public reference room (RIPS) file revealed that most comments opposed the concept of temporary operating authority. No comment in the reference room file supported the Notice proposal without some substantial conceptual modification. The League has been sent copies of comments not in the file, however, including at least one that supported the Commission's proposal, raising

very few suggested alternative plans for temporary operating authority, and as will be seen below, these are unworkable. It is obvious from the comments that the bulk of the commenters, including a number of young, recently licensed amateurs who filed comments, do not wish to compromise the integrity of the Service by **any** temporary operating authority, when electronic filing of applications will reduce substantially the time in which newcomers must wait for Commission licenses, thus solving the problem sought to be addressed in the Notice. Typical of the comments filed are those of Mr. James T. Viele, N8IRL, of Hubbard, Ohio. Mr. Viele, an extra class amateur licensee and a volunteer examiner, notes that:

I fully support the position of the ARRL that more effort should be made to hurry the implementation of electronic filing of information by the VECs and getting the new Gettysburg computer system on line. My understanding is that this would cut down the license turn-around time to a few weeks. Certainly this is not too long to ask a new amateur to wait for a license that will be good for ten years.

(comments of James T. Viele, at 1)

3. Most of the comments opposed to the proposal noted that the Citizen's Radio Service, which is the most glaringly undisciplined radio service administered by the Commission, went to a "temporary licensing" plan some time ago, and now operates on a blanket license basis pursuant to statutory jurisdiction that does not exist in the Amateur Service. Temporary licensing did not work in that service at all, to the extent that the Commission lost all control over the licensees, and had no database to use in any attempt at enforcement. The other services that the Commission

questions about the completeness of the RIPS file.

holds out, at footnotes 7-9 of the Notice, as examples of services in which temporary operating authority has been utilized (i.e. the Marine Radio Service and the Private Land Mobile Radio Service), each suffer a severe problem with unlicensed, not to mention undisciplined, operation. Each of those radio services serves as a good example of how not to configure a temporary licensing plan. Even if temporary unlicensed operation could be interpreted to be consistent with the Communications Act, which the League continues to dispute (other than with respect to the Citizen's Radio Service, where specific legislation exists), it is nonetheless an invitation to unlicensed persons to create call signs and use the amateur frequency allocations without ever submitting to the requisite examination or basic licensing procedures. The Commission itself suffers an inability to stem the tide of unlicensed operators in any radio service, because of limited enforcement resources. In the Amateur Service, the Field Operations Bureau relies on amateur volunteers to provide assistance in monitoring amateur bands for rule violators and interlopers. The League, and the commenters in this proceeding, request that the Commission not deprive the Amateur Service of the ability to self-regulate in its own frequency allocations, by making the licensee database effectively useless as a means of determining who is licensed with what call sign. The comments of Mr. Scott Nolte, N6CUV, of La Crescenta, California, state succinctly:

I am also concerned about creating a type of call sign that would be extremely difficult to verify. Illegal radio operators are not new, but this proposal would make it very easy for someone to fabricate a call sign that

could not be verified by any known database. This appears to be an open invitation for rampant violations of FCC rules. Currently all call signs are public record and can be authenticated through the use of call books and Commission records.

I see nothing in PR Docket 93-267 that sets up a system to track these "temporary" call signs and make that data available to all amateurs so that they can confirm that they are communicating with legally licensed radio amateurs. This could create new problems where they currently do not exist. (Nolte Comments, at 1)

The Comments of the Metropolitan Amateur Radio Club of North Little Rock, Arkansas also stated the same concern well:

The Commission has stated on many occasions that budgetary restraints and lack of personnel prevent much enforcement action as far as the Amateur Radio Service is concerned. Although the Amateur Radio Service has a long and proud history of self-regulation, the elements of this new proposal would place a severe burden on current resources within the amateur community with little or no hope of assistance [from] the Commission.

(Metropolitan ARC Comments, at 1)

III. Alternative Plans For Temporary Operating Authority Are Unworkable

4. Even those who tentatively support the concept of temporary licensing in the Amateur Service do not support the Notice proposal. The comments of Mr. Fred Maia, W5YI, note that the Commission has no record of receipt of an FCC form 610 application until the license is actually issued. Therefore, there is absolutely no enforcement data that the Commission has concerning a particular applicant until it issues the license. Thus, as a practical matter, the reliance in the Notice on the pendency of an

application at FCC as a basis for the grant of temporary operating authority, is misplaced.³

5. Mr. Maia, however, recognizing that the temporary operating authority proposal in the Notice is an open invitation for abuse⁴, suggests a radically different plan by way of a counterproposal. He suggests that blocks of call signs be divided (by the Commission) among the VECs, for distribution (by the VECs) of sub-blocks to the Ves, and that the Ves each assign temporary call signs themselves to the successful applicants. This same plan, or variations on it, was suggested by three or four other commenters, since the Notice proposal appeared unworkable.⁵ The first problem with this type of

³ Section 308 of the Communications Act of 1934 precludes the issuance of a station license except upon written application received by the Commission. The Notice indicates that this requirement is satisfied by virtue of the fact that a Form 610 is submitted by an applicant to the Commission when he or she passes an examination. However, the mere fact that an application is submitted is meaningless where the Commission has no record of it until it is actually granted. Section 308 of the Communications Act cannot, therefore, serve as any basis for justifying temporary operating authority in the Amateur Service. In fact, it serves as a binding obligation of the Commission not to permit the same.

⁴ Maia makes an unsupported assumption that the abuse would not be particularly bad, however. The source of that assumption is not clear, except that he claims that most entry level amateurs come in at the Technician class level, and therefore their operating privileges are limited to VHF and UHF, and that unlicensed operation has less impact in those bands than in the HF bands, where worldwide communications are routine. The League does not agree that there is any relationship at all between the opportunity for undetected unlicensed operation and the license class of most entry level amateurs. There is simply no connection between the two, and no predictability as to where an unlicensed person might choose to operate.

⁵ See, e.g. the comments of Gordon Girton, Kevin D. Biekert, and Mark E. Jenks. Some variations included making more objective the composition of self-assigned call signs, rather than merely

counterproposal is that there is absolutely no statutory basis for such a delegation of call sign assignment authority by the Commission. The delegation of the assignment of call signs appears nowhere in Section 4(f)(4) of the Communications Act, other than with respect to clubs and military recreation station call signs, and the Commission has chosen not to avail itself of volunteer assistance in that respect. Second, the proposal for allocation of call sign blocks for temporary operation purposes is itself a significant administrative burden, which the VECs and Ves are not in much of a position to undertake.⁶ This is especially true now, given the fact that with the advent of electronic filing of applications, there is already a data processing burden that the Commission is assigning to the VECs and Ves. The administrative undertaking of temporary call sign assignments by Ves or VECs, even

using the initials of the unlicensed person. Others were to have the Ves assign call signs. None of these alternatives addresses the problem, of course: They all suffer from the fact that an unlicensed person who never sat for an examination could merely make up a call sign in whatever format exists, and there is no centralized database for checking on its validity. Any arrangement which requires an amateur, checking on the validity of a call sign, to contact a particular VEC, or worse, a particular VE team, is effectively disabled from any self-enforcement at all, as is the Field Operations Bureau staff. One other variation, the use of the call sign of a club or examiner, followed by a sequential numerical suffix, is essentially identical to a temporary operating authority proposal summarily rejected by the Commission December 31, 1987, in RM-5924. No licensee wishes for his or her call sign to be used by other amateurs over whom he or she has no control.

⁶ Asking VE teams to assign temporary call signs is a significant task that should properly be reserved for the Commission in any case. Ves should not be subjected to pressure for specific temporary call sign assignments, nor the enforcement burden of keeping track of its assignments.

if it could somehow be construed as a legal delegation of Commission authority, is grossly disproportionate to the benefit to be gained, especially in the advent of electronic filing of applications. Third, the issuance of temporary call signs by Ves places an unreasonable obligation on the Ves to determine eligibility of individuals for temporary operating authority. It is essentially a delegation of the determination of a licensee's basic qualifications. As Mr. Viele's comments note:

There are other problems, too. The proposed rules indicate that this instant licensing procedure will not be available to a person with a history of non-compliance with FCC Amateur Radio Service rules. How am I, as a Volunteer Examiner, supposed to know if the applicant before me fits into that category? It should be obvious that he is not going to tell me. Is it right that we would unwittingly issue operating privileges to this person? Even if the Commission eventually discovers this error and cancels the license, that person would have been operating for a considerable length of time. And with the ability to invent an official sounding call with no checks or balances would that person cease operating or just make up a new call and go on his merry way?

(Comments of Mr. Viele, at 1)

Mr. Viele's concern is valid whether the VE is assigning a call sign or not. Furthermore, the Ves would have no way of knowing whether the applicant proposes a station configuration constituting a major environmental action under Section 1.1307 of the Commission's Rules, or whether the person meets the basic qualifications for licensing in other respects. Finally, the alternative proposal for VE-assigned temporary call signs does not solve the problem of accountability: there would still not be any centralized database of call sign assignments that is readily available for checking the validity of a particular use of a call

sign. No matter what the formula for assigning temporary call signs, a person could get on the air without any of the prerequisites for licensing, and the ability of other amateurs to detect the phony operator is effectively nil.

IV. There are Other Practical Difficulties With The Notice Proposal

6. Commenters in opposition to the Notice proposal note other important practical difficulties as well. Under the Notice proposal, there would be a significant possibility of duplicate call signs. Therefore, it would be impossible to determine who is operating what station, even if there was some centralized database involved, which there is not. As noted by the Metropolitan Amateur Radio Club, if the Commission's effort is to reduce the number of telephone calls to its Gettysburg office about the status of applications, any reduction in such calls would be offset by the calls from amateurs seeking to determine whether a temporary call sign is legitimate, or by holders of temporary call signs inquiring as to the status of the assignment of their permanent license and call sign, since the temporary call sign would brand the person as an unlicensed newcomer⁷.

⁷ This is not insignificant. It was an important element in assimilating new amateurs upon implementation of the "codeless" amateur license class that the call signs assigned to those persons not be such as to segregate holders of technician class licenses. Some commenters in this proceeding objected to any segregable call sign group that would identify an amateur as being separate from any other group of licensees.

V. Conclusions

7. In summary, the comments in this proceeding are in agreement with those of the League. The Commission is to be commended for attempting to accommodate the Amateur Radio Service by reducing the presently overly long waiting period between the time a newcomer to the Service passes an examination and the time he or she is able to get on the air with a Commission-issued license. The amateur community is not unsympathetic to the problem of calls to the Commission's Gettysburg office concerning status of applications as a source of further delay in their issuance. However, with an entirely satisfactory solution to the problem at hand, and one which suffers none of the enforcement difficulties of the temporary licensing plan proposed in the Notice, the amateur community has overwhelmingly rejected the latter. The comments reflect a desire to "get on with it" with respect to electronic application filing, to the extent that the VECs are willing to assume the data processing burden in submitting forms 610 electronically.⁸ This cannot be more than a few months away at worst, given the Commission's new computer system and the elimination of the signature requirement for private radio applications. It would be more expeditious to terminate this proceeding and proceed with implementation of electronic filing

⁸ The ARRL-VEC is by far the largest VEC in terms of examinations administered, and it is ready right now to proceed with electronic filing of applications. It is our understanding that other VECs are similarly prepared. There is no reason to proceed otherwise at the present time.

arrangements than to attempt to address the myriad of problems in this proceeding.

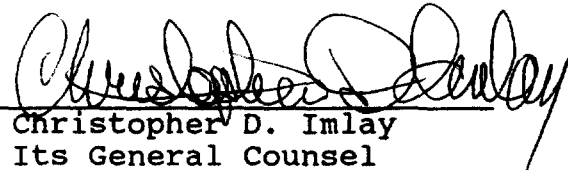
Therefore, the foregoing considered, the American Radio Relay League, Incorporated respectfully requests that the Commission terminate this proceeding without action, and proceed as soon as is practicable to an alternate solution to the same concerns expressed in the Notice, by permitting electronic filing of Forms 610 by the Volunteer Examiner Coordinators.

Respectfully submitted,

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By


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February 10, 1994

CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager in the law firm of Booth, Freret & Imlay, do certify that copies of the foregoing REPLY COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED were mailed first class, postage prepaid, this 10th day of February, 1994, to the following:

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